

# Legal Specialization Digest

## Report of the Chair

By John W. Munsill  
Certified Family Law Specialist

### ADR SPECIALIZATION: OUT OF THE BOX AND INTO THE OPEN

Over the past 33 years, the California State Bar's legal specialization program has expanded to provide certification<sup>1</sup> in eight fields: Appellate Law; Bankruptcy Law—Personal and Small Business; Criminal Law; Estate Planning, Trust & Probate Law; Family Law; Immigration & Nationality Law; Taxation Law; and Workers' Compensation Law. Of these eight fields, Appellate Law uniquely certifies attorneys in primarily procedural skills.

For the 2003-2004 Bar year, the Board of Governors, on recommendation of the Board of Legal Specialization, has appointed a consulting group consisting of experienced mediators, arbitrators, private judges, and practitioners of collaborative law to determine the feasibility of at least one, if not two, new areas of certification in a second procedural skills area: Alternative Dispute Resolution (ADR).<sup>2</sup>

Perhaps no other field of legal practice is experiencing such a demand for skilled practitioners from both the consuming public and the judiciary as is ADR. Personal and public budgetary constraints (if not crises) are leading legal consumers to hire, and the courts to solicit as volunteers, attorneys who will serve as arbitrators, private judges, and mediators, in an attempt to relieve the congested and financially exhausted court system. Even where ample court time and funds exist, consumers frequently seek alternative ways to resolve their conflicts. Lawyers, judges, and mental health professionals, in an interdisciplinary endeavor referred to as "therapeutic jurisprudence," are examining the effects of our court system on the emotional and psychological health of its participants and on society in general. (See the May 2000 issue of *Court Review*, the journal of the American Judges Association, which presented a symposium on therapeutic jurisprudence.) Attorneys, in turn, are seeking training and experience in new ADR problem-solving models, including (a) presenting matters to or serving as an arbitrator/private judge, (b) creating and performing under collaborative problem-solving contracts entered into with

opposing counsel(s) and their client(s), and (c) assisting parties to communicate better and solve problems themselves through mediation. (For a discussion of mediation models, see Waldman, *Identifying the Role of Social Norms in Mediation: A Multiple Model Approach* (1997) 48 Hastings Law Journal 703.)

Many State Bar Sections have formed their own standing committees on ADR, and attorneys and other professionals have formed and/or joined ADR organizations such as the California Dispute Resolution Council, the Association for Dispute Resolution of Northern California, the Bay Area Collaborative Law Group, and the International Academy of Collaborative Professionals. County bar associations from San Diego to Sacramento have joined with their local judiciaries in developing ADR programs like the San Diego Mediation Center and the San Diego Probate Mediation Program. Private groups such as the American Arbitration Association and JAMS have turned ADR into both a profit center and a significant source of relief for our overburdened and underfunded court system.

Both the California State Bar and the American Bar Association's Task Force on the Model Definition of the Practice of Law are busy examining ADR and related issues, including the definition of the practice of law. The Judicial Council's Task Force on ADR and Blue Ribbon Panel on Arbitration Ethics recently completed their examination of ADR and its practice. [For an example of the confusion in this area, see *Furia v. Helm* (2003) 111 Cal.App.4th 945, 953-956, holding that "[m]ediation is not the practice of law" but that plaintiff had plead sufficiently against an attorney mediator both a duty and breach of duty to perform with the "skill and prudence ordinarily to be expected of one performing that role." The court said it wasn't sure if plaintiff's label of "Legal Malpractice" was "entirely accurate" but noted that the

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mediator's duty (and breach thereof) arose out of his having accepted employment"... to give legal advice or to render other legal services...." (Emphasis added.)]

As evidenced at the American Bar Association's March 2003 Roundtable on Specialty Certification in Scottsdale, Arizona, federal and state courts and bar associations around the country are investigating and/or implementing various ADR programs, including specialty certifications for attorneys who serve as mediators and arbitrators/private judges and practice other forms of ADR. In their presentation, "ADR and Trial Certification . . . Can They Work Together?", the representatives from the New Jersey Supreme Court quoted a recent article questioning the trend away from jury trials and toward arbitration and mediation: "Over the last 30 years, trials in federal court have become increasingly scarce, even though the overall workload in the courts has skyrocketed." Per the author of that article, "[e]xperts suggest a variety of reasons for the decline. Often cited are (sic) the push by legislatures and judges for alternative dispute resolution, as well as the costly and time-consuming nature of courtroom trials." As one federal judge notes, "We are creating a whole new culture where a trial is perceived as a failure of the system." (The Vanishing (2002) 88 American Bar Association Journal 25-27.) Even if ADR endangers stare decisis while providing parties "much-wanted privacy" as the author of this article suggests (*Id.* at 26), there is no doubt that ADR is not going away and that the State Bar's membership, the courts, and the public deserve State Bar oversight of attorneys who choose to specialize in this field. (For a review of U.S. and Canadian approaches to certifying mediators, see Waldman, *Credentialing Approaches* (Fall 2001) *Dispute Resolution Magazine* 13.)

ADR offers the Bar an opportunity to think—and perform—out of the box. As the California Supreme Court's licensing and policing agency for the practice of law, the State Bar has a duty to recognize new fields of practice and to assist its membership and the public in offering and obtaining the best services possible in every field of practice. Forming a consulting group to determine the feasibility and parameters of specialty certification(s) in ADR is an important step in fulfilling that duty, one that will take the Bar out of the box and into the wide open field of problem-solving that characterizes the modern practice of law.

<sup>1</sup> Certification validates a lawyer's specialty through comprehensive testing, completion of rigorous task and experience requirements, and peer review by fellow attorneys and bench officers. That validation process serves two important needs, improving the level of practice for attorneys who participate in the certification and recertification program and assisting consumers in identifying lawyers whose procedural and substantive skills match a consumer's specific legal needs.

<sup>2</sup>One area is client-based ADR such as collaborative law and mediation—in which the clients control the outcome of their dispute. The second area is third-party based ADR, such as arbitration and private judging—in which the participants follow a hybrid litigation model, presenting their facts and legal arguments to a third party, who decides the outcome.

## Busted!

*Submitted by Steve Cron of Cron, Israelis & Stark*  
 Certified Criminal Law Specialist

**R**epresenting celebrity clients arrested for criminal activity demands a special skill set of lawyers. Defending icons of the American cinema, television, pop music and sports means lawyers will face problems that do not arise in the normal course of transactional and criminal proceedings. The far-reaching implications of a celebrity arrest are far more significant than for a person whose life is lived away from the spotlight. The ongoing publicity can devastate even the most famous stars. As the celebrity's lawyer, your job is not only to fight for a good result in the case, but also to protect your client's ability to keep performing in the public eye.

### Celebrity transactional lawyers need criminal law basics

As the client's transactional lawyer, you may never set foot in a criminal courtroom. But, if you are primed for unexpected 3 a.m. jailhouse phone calls, you can save your client a tremendous amount of pain. Even a simple arrest can have long-lasting effects on a celebrity's career. The transactional lawyer can minimize the pain by alerting the client – in advance – to the many landmines that arise following an arrest.

The transactional lawyer should consider having a criminal lawyer standing by to consult with his or her clients about what to do in certain circumstances. While this might seem unduly pessimistic, college and professional sports teams do it all the time. You know what they say: "An ounce of prevention ..."

### DUIs, domestic abuse and sex crimes

If a celebrity client gets stopped for driving under the influence, the celebrity might not know which blood alcohol test to take or the ramifications of refusing to take such a test. Or, if the celebrity client gets arrested and decides to call his wife from jail to tell her how sorry he is that he gave her a shiner, he should know that the call may be monitored and/or tape recorded – and that this evidence can be used in court (and might also be released to the media).

In many cases where the alleged victim knows the defendant, especially in sex cases, a common investigative technique is for the police to instruct the alleged victim to telephone the defendant, while the call is monitored and tape-recorded. The victim brings up the allegations on the phone and tries to get the celebrity defendant to respond by admitting to various acts or at the very least, by failing to strenuously deny them. Such evidence is admissible in court and can be devastating even if the celebrity defendant remains silent in the face of such allegations. Advance warning of police tactics aimed at celebrities can save the celebrity client incredible embarrassment and many years of incarceration.

### Advance knowledge: posting bail, sex with minors

The transactional lawyer and the client should also have some basic understanding about how bail is posted. There are circumstances where the media are racing to get the first images of your client leaving the jail before the bondsman can whisk him or her out the back door. Advance knowledge of the bail process is important in controlling the media's interpretation of events. Celebrity clients should also have advance knowledge of the implications of sex crimes with minors. A conviction for having

sex with a minor results in mandatory lifetime sex registration. Thus, wherever the client lives, they will have to report to the local police that they are a registered sex offender. The celebrity client may get uninvited visits from the police whenever there is a sex crime in the neighborhood. Of course, if the client is a genuine pedophile, nothing a lawyer can tell them in advance will change their behavior. But, if the client is a pop star who likes young girls, perhaps some advance warning might cause him to check the girl's driver's license before jumping in the back of the limo.

### Nine steps to success

#### Step 1 – The Client

Before you search for the narrowest of legal windows for your client to fit through, you must first deal with the potential obstacle of the client himself or herself.

The public adores celebrities and celebrities are used to being loved and catered to. Unfortunately, when the prosecution alleges that your celebrity client has run over a person and left the scene or been caught with a controlled substance, the celebrity may be experiencing a first encounter with people who do not adore them. Many celebrities are not used to other people – especially authority figures – telling them what to do.

### Celebrities are used to being loved, but all of a sudden...

Behavior that works when making a film or captivating an audience on stage does not always succeed with the police, the judge or the district attorney.

The lawyer should gently help the celebrity client understand that, while you respect their artistic talents, they need to appreciate that each and every representative of the judicial process must be taken seriously and treated with respect. As any manager or agent can attest, staying on the happy side of a celebrity client isn't always an easy ride. This is particularly difficult when a celebrity (who is used to the best of everything) is languishing in a jailhouse-holding tank next to some guy gnawing on a cheese sandwich and asking if your client can get him tickets to the next Lakers' playoff game.

At the first meeting with the client following an arrest, you have to make sure your client knows that the script he or she will be following allows no room for improvisation and it isn't likely to be a comedy. Before anything else, the celebrity needs to be very clear on the dangers of digging a deeper hole.

Assuming you speak with the client before the police, the client should always be advised not to make any statements without first consulting with counsel. It may turn out that the lawyer will allow the client to speak with the detective, but this decision should be made only after consulting with the lawyer and appropriate safeguards are in place.

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For example, the lawyer may allow the client to talk, but might first insist on reviewing discovery. Or the lawyer might want the conversation recorded in order to ensure its accuracy and, in any event, the lawyer should always be present to make sure the client's rights are protected. The client may be an esteemed professional entertainer, but in most cases he or she is an amateur when it comes to being arrested and understanding all of the implications of the legal system.

If the client is in custody, the lawyer needs to speak with those in charge of the jail in order to ensure that the client is adequately protected from other inmates. Most jails have special areas for those who may need to be separated for their own protection. However, the jailer may not know who your client is and may not recognize his or her need to be kept away from the rest of the jail population.

When the client is ultimately released on bail, the lawyer must confer with the jailers to agree on a means of exiting the jail that will spare the client as much hassle and unnecessary embarrassment from the media as possible.

## Step 2 – The Team

Representing a celebrity in a high profile criminal prosecution often requires a team of professionals – not just legal experts. Although the transactional lawyer may not represent the client in the criminal case, he or she is often called on to assess the impact of the criminal proceedings on contracts the client may have for performances or endorsements. Additionally, most clients have agents and/or managers who will want to be involved in the decision making process because it affects the marketability of the client. Finally, the management team for a celebrity often hires a crisis-public-relations consultant to help the lawyer and client control the outflow of information to the media.

The crisis-public-relations consultant can be invaluable when it comes to spinning the news and portraying the client in the best possible light. There are only a few firms that do crisis P.R. Knowing who they are and having one on stand-by is good practice. That way you don't have to scramble around in the middle of the night trying to handle a P.R. crisis without the requisite professional on board. Interviewing potential crisis team players before there is a crisis is well worth the time.

When representing a celebrity in a high profile criminal case, the team must keep in mind that the disposition of the case is critical, but the public's "perception" of the disposition of the case may be even more important for the celebrity's future. For example, a client who is arrested for a shocking offense – such as child molestation – could ultimately be exonerated, yet still suffer a fatal blow to his or her career. Thus, a skilled crisis-public-relations person can keep a watchful eye on news flow to ensure that the client isn't winning the case – but losing in the court of public opinion.

Everyone on the team needs to be on the same page, to dispense with his or her own egos and personal agendas and to work for the betterment of the celebrity client. The celebrity client's lawyer must be in charge of the case – not the client's mother, his wife or his manager. But, the lawyer must be aware of how many people depend on the client and should be sensitive to the fact that their very livelihoods may depend on a successful outcome to the criminal case. Keeping the team together and working for the common goal is paramount.

## Step 3 – The Theme

In any case involving a celebrity, you need a theme for your defense. Is the case about the celebrity's dog attacking the neighbor? Or is the case about the secret life of the neighbor? The theme should be something simple like: "My client is not a child abuser and we are confident that he will be exonerated once all of the evidence is made public." It may be that what you are trying to establish is that the client is not guilty of the child abuse charges, for which you expect him to be exonerated, but may be guilty of other unspecified charges. In any event, you want to repeat your theme often and use words in a way that states the celebrity's position in the most positive manner – without making statements that later prove to be false.

In the initial stages, you probably won't know much about the case other than what the client tells you. Therefore, it is vital to maintain a trusting relationship with the celebrity client so that they will be completely honest with you. Unlike transactional matters, the specific criminal allegations are something you may never talk about with your client. Demand complete client candor so there are no surprises later in court.

In a normal case, a defense lawyer has some time to evaluate the evidence and prepare a response before taking any action in court, so the lawyer and client have more time to establish a trusting relationship. In a high profile case, the lawyer will probably be confronted by swarms of media when walking out of the jail, perhaps after having spoken with the client for the first time on the criminal charge. The lawyer will be inundated with questions about the client and the case and any statements he or she makes will be aired again and again, sometimes to the client's detriment if they later turn out to be untrue.

Clearly, the burden is on the lawyer to be very cautious in talking to the media and in declaring the theme. But, if the client has misled the lawyer, mis-statements can have a devastating effect on the credibility of the lawyer and, by implication, the client. If the lawyer loses credibility in the media, most pundits will assume that his or her client misled the lawyer. Therefore, the client loses credibility long before he or she has a chance to testify in court.

Reinforcing a strong rapport with a celebrity client is critical, because once you circle the wagons, you may not have another chance. You must do everything possible to secure your client's confidence in the theme from the beginning by explaining why it is critical for him or her to be completely truthful. This level of confidence can be achieved best if the transactional lawyer, criminal lawyer and crisis-public-relations consultant meet the celebrity client before an arrest takes place. That way, if an arrest happens in the future, when the team shows up at the jail, the client will be happy to see familiar faces. The client will also be able to help develop the case theme with the team much faster.

## Step 4 – Spin Control

Once you have the theme, you have the backbone of spin control. Developing the theme and reducing it to a few key talking points early on is essential. If the lawyer lacks experience in dealing with the media, there are countless media consultants available to train and critique the lawyer. Many have their own video equipment so the lawyer can practice dealing with poten-

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tial questions and issues and have the opportunity to review his or her performance in the comfort of a private conference room before taking it public.

As publicity escalates, your theme becomes your mantra: "My client is not guilty of owning a 90-acre pot farm and has never owned property in Mendocino." The media are often looking for short catchy audio or video clips for the evening new or the morning talk shows. The more creative and proactive the lawyer is, the more likely he'll get the sound bite he wants on television or radio.

For example, if the lawyer says, "My client denies possessing cocaine on Easter Sunday," he's less likely to be on the evening news spreading the word about his client's innocence. On the other hand, if he says, "How is it possible that my client could possibly be charged with a crime when he was home painting Easter eggs with his three little children and the family cocker spaniel?" his chances increase dramatically. Be prepared with the sound bite you want to be heard and read.

## Step 5 – Talking points

Many lawyers are frustrated with the knowledge that the media will take their language and chop it and change it to suit the nightly news. Indeed, the media and the law do have a strange relationship. However, once you accept that their medium is powerful and unlikely to go away, you can provide them with information they can use and that will also help you get your message across.

If the media like you and believe you're trying to be honest with them, they can have a constructive effect on the way your client is perceived in the public's eye. If you have an existing relationship with the media from past cases, they will already know you can be trusted and that you can be counted on to be forthright with them while still protecting your client from over-exposure to the media.

In the political arena, politicians have the time to assemble focus groups to see how slight variations in language influence their constituency. Unfortunately, in criminal cases involving celebrity clients, not only do you not have time, you don't have a definable constituency. Fans of celebrities can sweep across the social landscape and represent every demographic factor.

The lawyer must keep in mind that, when dealing with the media, the lawyer is playing to countless constituencies, including: (1) the public that pays money to see the client and will, hopefully, remain enamored of him or her, (2) the public that may be called to sit as jurors deciding your client's fate, (3) the judge who will make critical rulings and may end up sentencing your client, and (4) the district attorney, often an elected official, who will be looking at the public's perception of the client when deciding how to proceed with the case. Taking care of all of these constituencies when dealing with the media is challenging – nevertheless extremely important.

## Step 6 – Preparation

Learning how to provide "telegenic" footage for television news broadcasts is essential. When facing the cameras and tackling spin-control, your case theme is a comfortable fallback position when asked an uncomfortable question at a press conference – even if your answer to an uncomfortable question doesn't answer the question. For example:

Question: "Are you saying, Mr. Lawyer, that your client was not caught in the back seat of his limousine with a teen-age prostitute?"

Answer: "My client is happily married, is not a child molester and is not guilty of these charges."

Question: "Do you have any comment on recent reports that your client is wanted for murder in three states?"

Answer: "Well, as you know, there are certain things I am not allowed to talk about, but I do want to remind you that my client is happily married, is not a child molester and is not guilty of these charges."

Clearly, this approach will not work if the lawyer sits down for an in-depth interview with Larry King, but it will work on the courthouse steps where one can expect a 10-15 second sound bite to be seen on the evening news.

Before agreeing to sit down for an in-depth live interview, the lawyer should carefully consider his or her case and be clear on the purpose for such an interview. It is very flattering to have national news media asking to put you on television, but one must resist the temptation for personal aggrandizement and first decide if it will benefit the celebrity client. There may be difficult questions that will prove embarrassing for the lawyer and devastating for the client in the work of public opinion.

If the decision is made to participate in the interview, carefully rehearse. Hire professional media consultants with video equipment so that you can see how you look on television and prepare for the toughest questions. When talking with media, every word counts and the lawyer must carefully analyze the forum in which his or her words will be broadcast.

## Step 7 – Rules of Professional Conduct

There are also ethical rules to consider in handling the media. In California, California Rule of Professional Conduct 5-120 governs the conduct of lawyers with regard to trial publicity. The general rule as stated in subsection (A) is that a lawyer may not make extra judicial statements that one would expect to be disseminated by public communication "if the member knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."

As with all such rules, there are many exceptions. Subsection (B) allows, among other things, for a lawyer to publicly disseminate the nature of the charges, the identity of the accused, details about the arrest, a warning of danger concerning the accused person's behavior and whether or not an investigation is continuing. Since the district attorney and/or police have the right to make all of the foregoing public, fortunately Subsection (C) allows a lawyer to make a statement that a reasonable lawyer would believe is "required to protect a client from the substantial undue prejudicial effect of recent publicity" that was not initiated by the lawyer or the client. Thus, in most cases where the prosecution publicly announces the defendant's arrest and the charges involved, a diligent lawyer will often feel compelled to speak out publicly to protect the client from the prejudice inherent from his or her arrest announcement.

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Often during the course of a criminal case there may be breaking news that you may want to release publicly before a newspaper or magazine runs the story. For example, you learn that a newspaper has found out about your client's prior conviction for a similar offense. This type of an announcement should often be disclosed on a live television program such as "Today" or "Good Morning America," because then you know that the announcement will not be edited as happens in the editing room of a newspaper or local television station which only wants you on the air for a limited amount of time.

I had no specific training in dealing with media, but over the years, I have learned to cope. If you represent celebrities, try to prepare yourself in advance for criminal matters, so you can effectively deal with the theatrics of the situation. By representing a celebrity, you too are in show business.

### Step 8 – Protecting the beloved mystique

Often law enforcement decides, even before the case begins, that your client is going to be made "an example." Sometimes, when a celebrity is perceived as "cocky," the media and the jury decide that the celebrity defendant "needs to be taught a lesson."

The celebrity client's lawyer should make sure that the media and the public recognizes that your client deserves no more and no less from the criminal justice system than any other civilian. You should strive to make it easy for judge and jury to give your celebrity client a fair trial. Never let yourself or the criminal justice system forget that underneath the fame is a citizen who may simply have made a mistake.

The more you allow your celebrity client the freedom to be human, to drop the trappings that are so rigorously demanded by the entertainment and sports industries, the greater the chance for fairness in the criminal justice system. When a lawyer treats a celebrity client like a real person, the client may lose some of the glitter, but they will also feel more relaxed throughout the process. When the lawyer treats the client the same as any other person, the courtroom and public are presented with a model that allows them to get past the celebrity and to also treat your client like the person next door.

However, in a high-publicity case, we know that the public is not the only audience. As noted above, there is also the media and they are not all that interested in the guy next door – so be wary.

The public wants glimpses of their beloved star. The lawyer must help the client maintain their celebrity status while at the same time asking him or her to hunker down and be just a regular person. How do you reconcile that inherent contradiction? By encouraging the celebrity to explore and "own" whatever feelings they have of regret or dismay, but also to know that even though they may have made a mistake, the public still loves them. There is no reason to hide behind hands, to slam limo doors or to ignore the media and the public. That's like ignoring a shark. It's a recipe for being eaten alive.

More and more celebrity criminal cases are tried in the media. When a celebrity is accused of a crime, the media feeds on the event to a greater extent than non-celebrity criminal cases. The court of public opinion can dominate the proceedings. But the media and the court of public opinion can be influenced to focus on the innocence, or at least the

### More and more celebrity cases are tried in the media

good will, of the celebrity client. It's not who the celebrity is, but something the celebrity did, that was wrong – and yet an understandable mistake, for which the celebrity will pay a fair price.

### Step 9 – Perception vs. reality

The last and probably most important step in celebrity representation is being able to navigate your own internal terrain during all the twists and turns a celebrity trial may take. You want a need the public to perceive that you will succeed on behalf of the celebrity client. The public must grasp that you are tough and that you are capable of returning the celebrity icon unscathed to the screen, stage or playing fields. But in reality, you also need to be calm and to hold the celebrity's hand – something that is rarely required in a corporate or real estate or general entertainment transaction.

You need to be perceived as a heavy hitter in the courtroom, but a nice guy nonetheless. Of course, none of this perception would matter if the case were not being tried on television. But, because a celebrity case is the dirty laundry this world loves to feast on, the lawyer needs to balance that perception of "going for the jugular" when he or she is dealing with the prosecution, with the "gentleness of a caregiver" when dealing with the client.

If the public decides at any point that you are a jerk, that you are too much of a pit bull, or that you are too much of a goody-two-shoes, they will decide almost as a single body that you are not the "right" representation for the celebrity. This low standing in the public eye can sometimes motivate a celebrity client to change lawyers. That can damage not only your reputation, but derail the case and cause a lose-lose situation for both you and the celebrity.

### Conclusion

To get through a celebrity trial, my goal is to always remain calm, to be the one person that everyone on the team can turn to as their fears mount and the outcome seems uncertain.

The lawyer needs to be confident, credible and in control. A great sense of humor is also a must, especially for those days when you think your parents might have been right about medical school instead of the law. Believe it or not, how you come across in the media can often make or break your client's career.

Finally, the lawyer needs an extreme sensitivity to the crisis-public-relations aspect of celebrity criminal cases and must devote as much thought and preparation to dealing with the media as he or she does in preparing a legal defense to each element of the charges. The result will be a success in court as well as in the court of public opinion.

*The article does not reflect the author's experiences with any particular client, but is a compilation of experiences gained from representing many celebrity clients over a career of more than 28 years. No inference is made or intended to reflect the author's experiences with any particular client.*



## Technical notes from bovitiz.com

### **\*\*The battle with spam\*\***

By J. Scott Bovtiz

*Certified Personal and Small Business Bankruptcy Law Specialist*

I just returned from a short trip to Yosemite. I was off the Internet for three days. In the mountains, my remote cell phone/personal digital assistant could not access my e-mail in box. When I returned, there were 691 e-mails waiting for me. Exactly 666 (!) were unsolicited commercial messages (spam). Four e-mails had virus attachments.

I speak on technical matters with lawyers throughout the United States. People often ask me how to fight spam. My basic tips follow.

Install a good spam filter. I use SpamNet (<http://spamnet.com>). There are other services. To date, SpamNet has filtered 27,056 spam messages from my in box. SpamNet uses "group voting" from SpamNet users to identify spam. All of my e-mail comes to my in box. Then, my computer automatically asks the SpamNet server to identify spam. The spam in my in box is removed and placed in a separate spam folder on my computer. When a spam message sneaks through, I click a box to send a message to SpamNet identifying the message as spam.

Use your Internet Service Provider's own spam filter. Make sure you have opted in for this service. (There may be a small monthly fee.) AOL claims to catch more than 90% of the spam sent to its clients. These spam messages never make it to your in box, so you can't confirm AOL's claim.

Adjust the spam settings on your own e-mail program. In Microsoft's Outlook XP, go to TOOLS, then RULES WIZARD. But, don't be too restrictive. You could set a rule to keep out all e-mail, except e-mail from people in your address book. However, this would make it impossible to handle inquiries from prospective clients on the Internet.

Install a good virus checker (software) and update the virus list every week. I use Norton AntiVirus. (Why do all computer products squish their name together like AntiVirus and SpamNet? Do we have a shortage of spaces?) Set the virus checker to scan all e-mail attachments.

If possible, don't post your e-mail address on the Internet. Computer "robots" search the Internet for e-mail addresses.

When making purchases on the Internet, do not check the box to "get more information from our friends at corporation XYZ." These boxes are usually checked by default.

Don't reply to any spam, even if the message suggests that you can opt out of future e-mail. Many times, your reply will simply tell the spammer that your e-mail address is active.

Change your e-mail address from time to time. It will take a while for the robots to find your new address and stick you back on the lists. As a variation, use a free e-mail account (e.g., from [www.hotmail.com](http://www.hotmail.com)) as your default e-mail address on forms and such. Give another address to colleagues, family and friends.

Don't add to the spam problem. Don't send jokes or forward mass mailings to friends or family. Don't buy from spam merchants.

Send me your own spam tips for a future column -- by U.S. Mail, please.

### **Certified Specialist Receives Fay Stender Award**

Certified Family Law Specialist Kate Yavenditti, a long-time staff attorney with the San Diego Volunteer Lawyer Program, was awarded the 2003 Fay Stender Award at the State Bar's recent Annual Meeting in Anaheim. The Award was established to honor Fay Stender, a Bay Area attorney who spent much of her professional life fighting for prisoners' rights. The award is given to a feminist attorney who, like Fay Stender, is committed to the representation of women and/or disadvantaged groups, and whose courage, zest for life, and ability to effect change as a single individual make her a role model for women attorneys.

Ms. Yavenditti received the award as a result of her extensive achievement in improving the lives of women and children, most notably through her work against domestic violence.

## No 'Call Waiting'

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by Frank Vram Zerunyan

*Frank Vram Zerunyan is an attorney with SulmeyerKupetz, specializing in bankruptcy and bankruptcy litigation, business and real estate litigation. Dedicated to the memory of Richard Amerian*

**A**dopting a 24-hour turnaround time to answer all phone calls goes a long way toward making good attorney-client relations.

How effective you are in communicating with your clients has a major impact on how successful you are at preventing disaster.

Did you know that according to an American Bar Association study, the second largest cause of client suits, surpassed only by failure to properly calendar a matter, is failure to properly communicate with the client?

Years ago, I had the distinct pleasure of working with a retired California Appellate justice on a complex appellate matter. My association with this justice, one of my mentors, aroused in me a strict sense of responsibility to communicate with my clients. During his years of private practice, in order to adhere to this responsibility, he inflicted upon himself one of the worst pains a lawyer could be subjected to during his busy day: to return a phone call no later than the next business day.

What a novel concept! At the time I actually thought that my honorable mentor's concept was crazy and impossible. How could I, a member of the District of Columbia and California bars, with a full case load across the country, possibly return my client's call no later than the next business day? Further, did this rule apply to my least favorite clients? In any event, to my chagrin, my honorable mentor responded that his rule applied to all clients, even those that you did not like.

Always respectful of my honorable mentor's teachings, I decided to try this novel concept of returning a client's call no later than the next business day - yes, including my least favorite clients. Frankly, once I tried this novelty for a few days, weeks, and months, I noticed that my ability to get a good night's sleep increased while the number of my least favorite clients decreased.

The once novel concept instilled in me by my honorable mentor is no longer a novelty. In fact, it is now my routine practice. And even if I am not expected to be in the office

the next business day, my secretary sees to it to return the call advising the client of my anticipated return date. I now adhere to this concept so religiously that recently a client called first thing on a Monday morning to inquire as to my health. I responded that other than my legs being tired from refereeing three soccer matches over the weekend, "grace a dieu," I was older, but as healthy as ever. I thanked him for his concern, but I could not help ask why he made the inquiry. He told me that he had called Thursday and left a message for me on Thursday afternoon and since he did not hear from my office by Friday's close of business, he assumed that I had fallen ill. As a result of this experience, I now have to figure out what happens if I am out of town and my secretary is absent from the office for one reason or another. Well, no one is perfect and I never suggested that I was.

I believe all my professional brothers and sisters, to borrow a phraseology from the Massachusetts bar, should return client calls immediately, or at least within a day. Ignoring calls implies that we do not consider the client important. One of the most common complaints from clients at every level is that the attorney didn't bother to return a telephone call or didn't keep them informed of matters germane to their legal concerns.

In late 1994, after a month-long jury trial, a Los Angeles jury taxed me with the responsibility of informing my clients, a group of successful and highly emotional businessmen, that their net worth had just decreased by approximately \$3.5 million dollars. Fortunately or unfortunately, I don't really know, I had asked the most emotionally charged individual to stay home as he was a danger to himself and others.

You see, at the beginning of this trial, in front of my own eyes, right outside the courtroom, this client snapped from the pressures of the trial and grabbed his own partner by the neck! In my stupefied state, I stepped between them and convinced the aggressor not to squeeze. We were lucky the paparazzi were lurking around the corner. In any event, as you can well imagine, he did not set foot in the

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courthouse again. However, he still had access to a phone and he knew my direct telephone number.

As I drove back from the courthouse that dreadful day, I prayed that Los Angeles would experience a blackout, wiping out all phone systems and most importantly, the one in my office. Unfortunately, God was not around to hear my prayers that day. Well, there was a message from my emotional client requesting a full report describing the events of the day. I thought very long and hard but in a moment of heroic courage worthy only to my ancestor King Dikran the Great, I decided that I would not stray from my policy of returning that client's call. So I promptly dialed his number and informed him that I was drained and tired, having slept only a few hours a day for the last few weeks, but I said I wanted to be sure to call him before I slept for the next 24 hours.

After explaining the verdict, there was a horrific silence on the other end of my telephone line. For more than a brief moment I feared that he would reach through the phone lines and make a grab for my neck. Then in a very calm voice he said, "I truly appreciate your call. Let's go win it on appeal." I was stunned and speechless. I couldn't even say goodbye or thank you. (In case you are wondering, the case was reversed and remanded with judgment entered for my clients).

While I do not pretend to be La Fontaine, the moral of the story is that you must contact your clients to keep them up to date even if the news is not going to make their day. It's good practice to provide them with periodic reports. Carbon copy them with correspondence and pleadings you draft on their behalf. Clients appreciate seeing what you are doing for them and what issues lie ahead. If clients feel that you are genuinely concerned about their matters, they will be less likely to make you the target of their disenchantment even during trying times.

While most clients generally defer to their attorney's advice and judgment on important questions, it is crucial that you keep them part of and informed on all important decisions. Show them that you respect their intelligence - after all, they hired you, and not vice versa.

In conclusion, an attorney is rarely sued when there is a healthy attorney-client relationship. Conversely, when the attorney-client relationship is distant, the danger of a liability claim looms regardless of the adequacy of the legal services.

So, when did you last call your least favorite client?

## Public Awareness Campaign Launched

The Board of Legal Specialization recently contracted with the Ardent Group to construct a public relations campaign. The Ardent Group will be designing a two-pronged public relations campaign designed to encourage qualified attorneys to become Certified Specialists and to educate consumers of legal services on the value of using Certified Specialists. This stage of the publicity campaign will evaluate ways in which consumers can be made aware of the value of Certified Specialists. The Ardent Group will then begin to craft specific messages that might be used in large-scale public awareness campaigns. The Ardent Group will study developing public relations pieces to be part of a "public relations toolkit" created for individual Certified Specialists.

"We are building the foundation for a public awareness campaign to educate attorneys on the value of certification, and to make certification a meaningful factor with consumers who seek legal counsel," said John Munsill, Chairman of the Board of Legal Specialization. "The Ardent Group will help create the tools to expand the scope of the Legal Specialization program in California."

Input from Certified Specialists on useful ways to educate attorneys and consumers on the value of legal specialization is welcomed. Suggestions and comments can be submitted to:

Board of Legal Specialization  
Publicity Subcommittee  
State Bar of California  
180 Howard Street  
San Francisco, CA 94122

## An Attorney You Know is in Trouble: Who You Gonna Call?

### The New Lawyer Assistance Program

Here is a scenario frequently presented to those who work in the field of lawyer assistance:

A colleague or attorney friend is having major problems with his or her practice. You suspect or know that these problems result from substance abuse, depression, other psychological problems, or a combination of these conditions. You know that the road this person is on is downhill all the way, but you feel powerless. You're concerned about your friend's welfare, but you don't want to do anything that will get your attorney-friend in more trouble. Where can you call for free, strictly confidential, knowledgeable advice and assistance with such a situation?

The answer is the new Lawyer Assistance Program (LAP). Established by Senate Bill 479 (Burton), signed into law in 2001 and effective January 1, 2002, the LAP is a confidential service of the State Bar of California. Staffed by professionals with many years of experience assisting and treating the legal community, the LAP provides assistance to attorneys whose personal or professional life is being detrimentally impacted by substance abuse, other compulsive behaviors, and/or mental health concerns such as depression and anxiety.

Senate Bill 479 states it is the intent of the Legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.

The LAP is a comprehensive program offering support and structure from the beginning stage of recovery through continuing care and including:

- individual counseling
- expert assessment and consultation
- assistance with arrangements for intensive treatment
- monitored continuing care
- random lab testing
- professionally facilitated support groups, and
- peer support groups

The program also works with family members, friends, colleagues, judges and other court staff who wish to obtain help for an impaired attorney. Financial assistance is available so that no one is prevented from participating in the program due to financial limitations.

Attorneys may self-refer into this program or may be referred as the result of an investigation or disciplinary proceeding. In some cases, participation may be in lieu of disciplinary action.

When requested by an attorney who is facing disciplinary charges and whose practice has been impaired by personal problems, the LAP can serve in a monitoring capacity, monitoring the attorney's continuing recovery for the Office of the Chief Trial Counsel or the State Bar Court.

One of the unique characteristics of this program is that the confidential nature of participation in the program is mandated in the statute that created the program (SB 479). The fact that an attorney is participating in the LAP is strictly and absolutely confidential. No information concerning participation in the program will be released without the attorney's prior written consent.

### Why Do Attorneys Need Their Own Assistance Program?

The practice of law is a challenging experience for many legal professionals. Studies indicate that attorneys experience extraordinarily high levels of stress and depression and have a higher than normal level of job dissatisfaction with their chosen career:

- At least a quarter of attorneys surveyed in multiple studies report suffering from stress so severe it impairs their practice.
- A Florida study revealed that 32% of the attorneys reported feeling depressed at least once a week.
- A Maryland Bar Association study found that one in three of the attorneys who responded intended to leave the practice of law within five years.
- A study by the ABA found that 40% of the attorneys responding were dissatisfied with their jobs.

Similar results have been found in other studies. Studies indicate that attorneys are less likely to take care of themselves than medical doctors and other professionals. Emotional distress, if not managed or treated, can lead to adverse impacts on an attorney's professional practice, clients, colleagues and on the attorney's personal life. Several studies also suggest that the incidence of chemical dependency among legal professionals may be as much as 50% higher than the incidence in the general population. This apparent occupational hazard may be attributable to the stress of legal practice, to some kind of self-selection process into the field of law, or a combination of these factors.

Clearly, legal professionals need an assistance program specifically geared to the unique pressures of legal practice and to the recovery needs of attorneys. Call toll-free (866) 436-6644 for confidential assistance from the LAP for yourself, a colleague, or a family member.

## The State Bar of California Board of Legal Specialization Celebrates 30 Years

On September 4, 2003, the Board of Legal Specialization (BLS) honored its first class of 30-year certified specialists at a breakfast reception held in conjunction with the State Bar Annual Meeting in Anaheim, CA. One hundred thirty-four attorneys have maintained their specialist status continuously since 1973 when the first specialists were certified in Criminal, Workers' Compensation, and Taxation Law. More than 20 of those being honored attended the reception and were presented with a certificate and watch bearing the Legal Specialization program logo to commemorate their 30 years. Making the presentation was Irwin D. Goldring, then chair of the BLS and himself a 30-year honoree who was presented with his certificate and watch by John G. Snetsinger, a member of the State Bar's Board of Governors.



Outgoing Chair of the BLS, Irwin D. Goldring (kneeling, far left), congratulates 20 and 30 year Certified Specialists.

One hundred-fifteen members of the class of 1983 were also recognized for their 20 years of continuous certification in Family Law as well as the three areas mentioned above. The BLS established the recognition program in 2000 for attorneys who have maintained their certification for at least 20 years.

Featured speakers at the reception included Ellen Waldman, a professor at Thomas Jefferson Law School, Certified Family Law Specialist Richard L. Dombrow, and Certified Estate Planning, Trust and Probate Law Specialist Michael C. Ferguson. Prof. Waldman spoke on "Therapeutic Jurisprudence," an emerging interdisciplinary approach dealing with the emotional and psychological side of the law and the legal process, followed by Mr. Dombrow and Mr. Ferguson, both former BLS chairs, who gave a presentation on the benefits of certification.



Prof. Ellen Waldman, featured speaker on "Therapeutic Jurisprudence."



John Munsill accepts the reins as the incoming Chair of the Board of Legal Specialization.

# Legal Specialization Digest

*Board of Legal Specialization  
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## New! Online Self-Service for Attorneys

The Legal Specialization program draws its mailing and contact information from State Bar Membership Records. If Membership Records does not have your current address and phone number, neither will we.

Now you can update your contact information (address, phone number, email) directly on the State Bar's website, [www.calbar.ca.gov](http://www.calbar.ca.gov), through *My State Bar Profile*. On the website's home page, click on *Member Login*. Have your fee statement handy the first time you use this feature because it contains the access code you will need to log on. You can also use *My State Bar Profile* to calculate and pay your membership and legal specialist fees and report your compliance with MCLE.

Please note that section 6002.1 of the State Bar Act requires that all Bar members maintain a current address and phone number on the official membership records of the State Bar, and that they notify the Membership Records office of any change within 30 days. If you do not have access to the Internet, you can mail new contact information to:

Membership Records  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Be sure to include your Bar number and an effective date!

### Legal Specialist recertification applications are now available online!

The Office of Certification now offers online recertification applications for all eight specialty areas of law. The PDF documents can be found at [www.californi-aspecialist.org](http://www.californi-aspecialist.org) under *New Stuff*.